

# New Hampshire Department of Revenue Administration

## Fiscal Note Quick Guide

12-2231.0

**HB 1705-FN-A**, *allowing purchase and use of marijuana by adults, regulating the purchase and use of marijuana, and imposes taxes on the wholesale and retail sale of marijuana.*

House Criminal Justice and Public Safety Committee

If this bill were to become law, it could not be administered by the Department of Revenue Administration without significant cost to study, develop and implement a licensing certification process, enforcement mechanisms, new tax implementation and collections, appeals, auditing and hearings procedures. This law would place significant additional burden on the Department at a time when the Department is already short staffed. As such, the Department could not be ready to administer this tax by the effective date of January 1, 2013.

In addition, as a result of this proposed legislation, the Department's involvement with this taxation imparts legal burdens on other agencies such as the Attorney General's office and county attorney's offices. The Department suggested that the Attorney General's Office be contacted for an impact statement as well.

This bill would be incredibly difficult to administer due to the multitude of security and enforcement issues implicit in a law allowing the ownership, use and sale of marijuana.

An attempt was made to estimate possible revenue from this legislation. However, the only available data on the production and usage of marijuana is outdated (from 2005 and 2006). Moreover, numerous questions arise from that data, including:

- Assuming that the estimated data is accurate. The data is estimated given the legal implications surrounding marijuana production and usage, as such it is difficult to arrive at accurate and factual data on production and usage.
- Whether marijuana would be imported across state lines (i.e. would wholesalers only be located in New Hampshire) even though the legislation does not authorize the transportation of marijuana outside the State of New Hampshire, unless federal law permits such transport.
- How much (if any) production would increase from current marijuana producers with the legislation.
- How many (if any) additional producers would start producing marijuana and how much marijuana would they produce.
- How much (if any) usage would increase from current users with the legislation.
- How many (if any) additional users would start using and how much would they use.

In an attempt to make an estimate of possible revenue, the Department also reviewed proposed legislation from other states that considered legalizing and taxing marijuana including California, Washington and Massachusetts. The other states' legislation, however, was significantly different in each case and did not offer reliable comparisons.

Based upon the analysis above, the Department was unable to provide a revenue estimate on this bill.

The Department did cite a number of various sections within the bill that the Department found unclear:

- The legislation provides under 77-G:7 I, that “[a]n excise tax is hereby imposed upon wholesalers and shall be collected on all marijuana sold to retailers at a rate of \$45 per ounce or proportionate part thereof.” At the same time proposed 77-G:7 II provides that “[f]or the purpose of determining the tax for the retail sale of marijuana pursuant to this chapter, the tax for the sale of marijuana shall be at a rate of 19 percent of the wholesaler price.” It is unclear to the Department if marijuana is taxed both at the wholesale and retail level.
- Proposed 77-G:2 IV states that “If the department fails to issue a retailer licenses to a qualified applicant within 90 days of its submission of its application and the applicant holds a valid retail tobacco license pursuant to RSA 178:19-a, the applicant shall be deemed to be a retailer...” The Department of Revenue, however, is not statutorily responsible for issuing retail tobacco licenses; that responsibility currently falls under the Liquor Commission.
- Multiple proposed sections (77-G:2, 77-G:3, 77-G:11) deem certain licensed retailers and wholesalers of tobacco to be retailers and wholesalers of marijuana if the Department does not meet certain time requirements in responding to license applications. There may be instances, however, where the Department did not receive either an application and/or license payment which would cause the applicant to not be qualified, but the applicant would still be allowed to operate as a retailer or a wholesaler if the Department does not respond in the appropriate time frame. For instances where the application is not received the Department would have no way to respond within the specified timeframe, yet the retailer or wholesaler could begin operating.
- There is a potential conflict between proposed 77-G:4, which prohibits the Department to issue a license to a retailer or wholesaler based on specific characteristics and proposed 77-G:2, 77-G:3 and 77-G:11, which allows an existing tobacco retailer or wholesaler to operate if the Department does not respond to their application within a certain time period. Proposed 77-G:2, 77-G:3 and 77-G:11 assume that the existing tobacco retailer or wholesaler would not operate as a marijuana retailer or wholesaler if they violate any of the restrictions in proposed 77-G:4.

Finally, the Department also noted in its Fiscal Note Worksheet that marijuana is considered a controlled substance under the federal Controlled Substances Act (Schedule I drug). For federal

tax purposes IRC §280E states that, “[n]o deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.”